COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 20 of 2002

Smt. Savitri Chauhan & ors. … **Appellants.**

Versus

Sukhwinder Singh and others. … **Respondents.**

Mr. Rajendra Dobhal, Advocate, learned counsel for the appellant.
Mr. Tanveer Alam Khan, learned counsel for the respondent no.2.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B. S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 17.11.2001, passed in M.A.C.T. No. 121 of 1999, Smt. Savitri Chauhan and others Vs. Sri Sukhwinder Singh and others, by the Motor Accident Claims Tribunal/Additional District Judge, III Fast Track Court, Dehradun ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 19,40,000/- along with interest @ 9% per annum in favour of the claimant-appellants as against the Opposite Parties-respondents no. 1 and 2 under Section 166 of the Act. Aggrieved, the claimant-appellants has come up in appeal challenging the findings of the learned Tribunal.

Brief facts, giving rise to the present appeal, are that deceased Sultan Singh Chauhan was travelling by Commander Jeep No. UP-07C-3509 on the fateful day, i.e. on 1.6.1999 from Dehradun to Rishkesh. Near the bridge of Lachhiwala, the driver of the jeep tried to overtake a Vikram and in consequence, his Jeep struck with a army truck, coming from the opposite direction, with the result deceased sustained grievous injuries and died on the spot. He was 39 years of age and was serving as Class I Officer in Punjab National Bank, drawing salary worth Rs. 15,230/-, hence the claim petition was filed by the appellants. Opposite Parties

No. 1 and 2 driver and insurer of the jeep both have contested the claim by filing separate written statements. The driver has taken the plea that to avoid the accident in question was beyond his control and it was not due to negligence on his part. He has also raised a plea that the amount of compensation is excessive. On the other hand, the Insurance Company-respondent no.2 has taken the plea of non-joinder of necessary party, i.e. Union of India. On this plea, Opposite Party-respondent nos. 3 and 4 were also impleaded as party to the proceedings. They also filed their written statement and pleaded that there was no negligence on the part of driver of military truck, rather the accident resulting into death of the deceased was result of rash and negligence on the part of jeep driver.

On the pleadings of the parties, ***two Issues*** were framed by the learned Tribunal, the ***first*** relating to rash and negligence on the part of the driver of the Commander Jeep and the ***second*** for relief. Before the learned Tribunal, the claimant-appellants have filed documentary evidence as well as they have examined as many as three witnesses. On the other hand, the opposite parties have neither filed any documentary evidence, nor have examined any witness in support of their case.

After hearing both the parties and considering the material before it, the learned Tribunal came to the conclusion on Issue No.1 that the motor accident in question was the result of rash and negligent driving on the part of driver of the jeep in question causing grievous injuries and consequent death of the deceased. Accordingly, the learned Tribunal decided Issue No.1 against the Opposite Party-respondent nos. 1 and 2. On Issue No.2, the learned tribunal has considered all the relevant material before it and found that admittedly the jeep in question was duly insured with Opposite Party-respondent no.2. This finding was supported by copy of Insurance Policy. Considering the permit, etc., the learned Tribunal held that since the vehicle in question (Commander Jeep) was

duly insured, therefore, the liability of pay compensation was fastened on the Insurance Company-respondent no.2.

Regarding quantum of compensation, the learned Tribunal after examining the material before it found that as per High School certificate, deceased Sultan Singh Chauhan was aged 39 years at the time of his death, therefore, the Tribunal has found that the deceased comes within the age group of 35-40 years and held that multiplier of 16 shall be applicable. The learned Tribunal also found that as per salary certificate, the deceased was drawing Rs. 15,230/- per month. On the basis of testimony of P.W.2, Sushma Rani, an Officer of the Regional Office of the deceased, the Tribunal also came to the conclusion that the deceased used to get salary worth Rs. 11,965.87 after deductions towards Provident Fund, etc. Ultimately, relying on the case law "2001(1) TAC, 139, Union of India and others vs. Kk.S.Lakshmi Kumar and others". the learned Tribunal deducted amount of Rs.300/- deducted towards payment of income tax and professional tax, and worked out loss of monthly dependency as Rs. 15,452/- - 300 thereby took round figure of Rs. 15000/- for purposes of dependency. Annual loss of dependency has been worked out after deducting 1/3rd towards personal expenses of the deceased, which comes to Rs. 1,20,000/-. After applying the multiplier of 16, as per Second Schedule of the Act, total loss of dependency has been worked out to be Rs. 19,20,000/- and in addition to it, sum of Rs. 10,000/- were assessed towards funeral expenses and amount of Rs. 10,000/- towards loss of consortium. Accordingly, the learned Tribunal has awarded total compensation of Rs. 19,40,000/- along with interest @ 9% per annum from the date of petition till the date of payment in favour of the claimant-appellants against the Insurance Company-respondent no.2, with certain directions as detailed in the operative portion of the order. The learned Tribunal has discussed the evidence on record elaborately in its judgment and award.

We have heard learned counsel for the appellants as well as learned counsel for the Insurance Company-respondent no.2.

The main ground of challenge taken in the memo of appeal by the appellants is that the learned Tribunal has erred in working out the compensation and has not taken into consideration certain amounts being paid to the deceased towards. On behalf of the appellants reference of the Apex Court Judgment in the case of ***"U.P.State Road Transport Corporation and Others Vs Trilok Chandra and Others" [(1996) 4 Supreme Court Cases, 362]*** has been made and it has been contended that deduction of 1/3rd of income of the deceased towards his personal expenses is contrary to law, therefore, the findings of the learned Tribunal are perverse. We have carefully perused the ruling of the Apex Court reported in ***(1996) 4 Supreme Court Cases, 362 (supra)*** and we find that in that case the Hon'ble Apex Court has observed that the Second Scheduled of Section 163-A of the Act suffers from several defects, therefore, while working out the loss of dependency, the said schedule should be used as a guide. It may be observed that in this case, the appellants have not at all disputed the application of multiplier of ***16***. In our view, multiplier of 16 has been correctly applied by the learned Tribunal. The bone of contention before us is whether deduction of 1/3rd of income of the deceased has caused mis-carriage of justice and the same is contrary to the aforesaid provision of law. In the case before the Apex Court the main question for determination related to the use of correct multiplier for determination of compensation. The Apex Court also found that the ready reckoner suffered from several defects. The case related to a fatal accident which took place on 1-8-1977 and the case has been first discussed in the light of the Motor Vehicles Act 1939 and in the latter part of the judgment provisions of Second Schedule were considered and the defects were taken note of. In the case before us, the entire matter related to Section 166 of the Motor Vehicles Act, 1988, the accident having been taken place on

1-6-1999. We have considered the whole matter from all the four corners of the aforesaid case law; but the learned counsel for the appellants has not been able to convince us as to how the calculations made by the learned Tribunal are contrary to the aforesaid Apex Court verdict. Considering the status of the deceased as he was a Class I Officer of the Bank and general life style as prevailing in the year 1999 itself, it can safely be held that out of monthly salary of Rs. 15,000/-, he might have spent Rs. 5,000/-towards his personal expenses including out-pocket expenses and transport/maintenance of own vehicle etc. In any view of the matter, we fail to accept the contention of the appellants that the multiplier system was wrongly used by the learned Tribunal and in facts and circumstance of the present case, deduction of 1/3rd income of the deceased cannot be said to be detrimental to the appellants. We are of the consistent opinion that the compensation awarded by the learned Tribunal is just and proper and in accordance with the provisions of the Motor Vehicles Act, 1988. The findings of the court below do not suffer from any illegality or infirmity.

Ultimately, the appeal fails on merit and the judgment and award under appeal is liable to be upheld.

Accordingly, the appeal is dismissed with no order as to cots. The judgment and award under appeal is upheld.

16-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP